



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

OCT 25 2005

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

DOCKETED BY

RS

IN THE MATTER OF THE APPLICATION OF
OCMC, INC. TO OBTAIN A CERTIFICATE OF
CONVENIENCE AND NECESSITY FROM ONE
CALL COMMUNICATIONS, INC. DBA
OPTICOM TO PROVIDE
TELECOMMUNICATIONS SERVICES AS A
PROVIDER OF RESOLD INTEREXCHANGE
SERVICES AND ALTERNATIVE OPERATOR
SERVICES WITHIN THE STATE OF ARIZONA.

DOCKET NO. T-04103A-02-0274
DOCKET NO. T-02565A-02-0274

DECISION NO. 68242

OPINION AND ORDER

DATE OF HEARING:

August 18, 2005

PLACE OF HEARING:

Phoenix, Arizona

ADMINISTRATIVE LAW JUDGE:

Dwight D. Nodes

APPEARANCES:

Mr. Michael Hallam, LEWIS AND ROCA, on
behalf of OCMC; and

Mr. Jason Gellman, Staff Attorney, Legal
Division, on behalf of the Utilities Division of
the Arizona Corporation Commission.

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the
Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. In Decision No. 67444 (December 3, 2004), the Arizona Corporation Commission
("Commission") granted OCMC, Inc.'s ("OCMC" or "Company") application for a Certificate of
Convenience and Necessity ("CC&N" or "Certificate") to provide resold interexchange services and
alternative operator services ("AOS") in the State of Arizona ("Application").

2. Additionally, Decision No. 67444 granted OCMC a six month waiver of the "zero-

1 minus”¹ rules as set forth in Arizona Administrative Code (“A.A.C.”) R14-2-1006.A, ordered the
2 Commission’s Utilities Division Staff (“Staff”) to review OCMC’s performance during the six-month
3 waiver period, and provided that OCMC may file for a permanent waiver.

4 3. On April 28, 2005, OCMC filed a Request to Make Waiver Permanent (“Request”)
5 requesting that the temporary waiver granted pursuant to Decision No. 67444 be made permanent at
6 the expiration of the six-month period, verifying that it was unaware of any customer complaints
7 relating to its provision of zero-minus service in Arizona, and indicating that it will file an additional
8 verification shortly before the expiration of the six-month temporary waiver.
9

10 4. According to Staff, OCMC was sent a data request on May 19, 2005, and Staff
11 received OCMC’s responses thereto on May 25, 2005.

12 5. On May 25, 2005, a Procedural Order was issued ordering Staff to file a
13 memorandum, which detailed not only its findings with regard to OCMC’s performance in providing
14 zero-minus services during the past six months, but also its recommendation with regard to granting
15 OCMC’s request for a permanent waiver of A.A.C. R14-2-1006.A.
16

17 6. On May 26, 2005, OCMC filed a Request for Expedited Issuance of Procedural Order,
18 which requested clarification that the temporary waiver will be extended pending the issuance of a
19 Decision on the permanent waiver request.

20 7. By Procedural Order dated May 31, 2005, it was ordered that the temporary waiver
21 granted to OCMC in Decision No. 67444 shall be extended until such time as a Decision is issued by
22 the Commission regarding OCMC’s Request.
23

24 8. On June 3, 2005, OCMC filed a Verification, which indicated that as of June 3, 2005,
25 OCMC was unaware of any complaints made by customers in relation to OCMC’s provision of zero-
26 minus service in Arizona.
27

28 ¹ A “zero-minus call” means a call that is made by dialing a single zero. A.A.C. R14-2-1001.19.

9. On June 17, 2005, Staff filed a Memorandum in response to the May 25, 2005 Procedural Order, which indicated that although OCMC's call processing times are longer than those provided by Qwest, those times are consistent with the information provided in response to prior data requests and have remained constant since the issuance of Decision No. 67444.²

10. Staff further indicated that there have been no formal or informal complaints received by the Consumer Services Section regarding OCMC's provision of zero-minus services during the six month waiver period.

11. Staff recommended that the temporary waiver of A.A.C. R14-2-1006.A granted to OCMC in Decision No. 67444 should be extended indefinitely conditioned upon OCMC's filing, every July and January beginning in January of 2006, a letter of attestation, signed by an executive of the company, indicating that the call processing times for the six months prior to the date of attestation adhere to its current levels. Staff further recommended that OCMC may discontinue filing such letters of attestation in July of 2009 if it has demonstrated the ability to continually and consistently adhere to its established call processing times. Staff indicated, however, that should OCMC fail to file the letters of attestation as recommended, that OCMC should be required to file an application to extend its waiver of the zero-minus rules within forty-five (45) days of the last date upon which a letter of attestation was to be filed with the Commission.

12. On June 24, 2005, a Procedural Order was issued setting a hearing date for August 18, 2005 in order to address the apparent discrepancy between the processing times of OCMC and Qwest. OCMC and Staff were directed to address through testimony and exhibits, at a minimum, the

²

Call Processing Times (in seconds)		OCMC	QWEST
After being connected to the automated operator the average/typical time reported for the caller to be connected with a live operator		10	7.9 – 9.6
After being connected with the live operator the average/typical time reported for the caller to be connected with an emergency service provider		44	25
The total average call processing time reported		54	32.9 – 34.6

1 following issues: how OCMC provisions zero-minus calls and an explanation of why its performance
2 does not appear to be of equal quickness to that of Qwest; OCMC data regarding the accuracy of
3 zero-minus calls and how that accuracy compares to Qwest; whether, and how, OCMC qualifies for a
4 permanent waiver of the Commission's zero-minus rules; whether any other AOS providers have
5 been granted a similar waiver and, if so, based on what criteria; whether OCMC provides AOS in the
6 service territories of any other LECs and, if so, how its zero-minus performance compares to that of
7 the other LECs; and whether the transient nature of AOS end-use customers would tend to minimize
8 the number of complaints from such customers for zero-minus calls that are handled by the AOS
9 provider.
10

11 13. On July 14, 2005, OCMC filed a Request to Vacate Hearing. The Company argued
12 that a hearing was not needed in this matter and a decision on the request for a permanent waiver
13 should be made based on the then-existing record. OCMC claimed that its zero-minus processing
14 times are as quick and accurate as those completed by Qwest, and based on comments made by
15 Commissioners at a prior Open Meeting, OCMC met the requirements for obtaining a permanent
16 waiver of the zero-minus rules (*i.e.*, no customer complaints were received over the past 6 months).
17

18 14. On July 15, 2005, a Procedural Order was issued denying OCMC's request to vacate
19 the hearing. The Procedural Order stated that although "OCMC's insight as to 'what is needed' for a
20 full record is greatly appreciated," the Company and Staff had been directed to file testimony
21 addressing the issues set forth in the June 24, 2005 Procedural Order so that the Commission could
22 determine, pursuant to the requirements of A.A.C. R14-2-1006.B., whether OCMC has "clearly and
23 convincingly demonstrated that it has the capability to process [zero-minus] calls with equal
24 quickness and accuracy as provided by the LEC."
25

26 15. On July 27, 2005, OCMC filed the Direct Testimony of David Hill, the Company's
27 Director of Technical Operations (Ex. A-1).
28

1 16. On August 5, 2005, Staff filed the Rebuttal Testimony of Del Smith, an Engineer
2 Supervisor with the Commission's Utilities Division Staff (Ex. S-3).

3 17. On August 12, 2005, OCMC filed the Surrebuttal Testimony of Mr. Hill (Ex. A-2).

4 18. The hearing was conducted, as scheduled, on August 18, 2005. Mr. Hill testified on
5 behalf of OCMC in support of the permanent waiver. Mr. Smith also testified in support of the
6 requested waiver, subject to the Company's compliance with the reporting requirements described
7 herein.

8
9 19. A.A.C. R14-2-1006 provides as follows:

10 **R14-2-1006. Public Safety Requirements**

- 11 A. AOS providers shall route all zero-minus calls immediately to the
12 originating LEC.
13 B. The Commission may, upon application of the AOS provider, issue
14 a waiver to subsection (A) of this Section if the AOS provider has
15 clearly and convincingly demonstrated that it has the capability to
16 process such calls *with equal quickness and accuracy* as provided
17 by the LEC. (emphasis added)

18 OCMC's Position

19 20. Mr. Hill described zero-minus calls as those calls that occur when a caller dials zero
20 and reaches an operator for completion of the call. He stated that the majority of such calls are not
21 placed for emergency purposes, but are made in order to place collect calls, calling card and credit
22 card calls, and third-party billing calls (Ex. A-1, at 2-3). The majority of zero-minus calls are made
23 from payphones, hotels, and motels. Mr. Hill testified that OCMC completes zero-minus calls as an
24 AOS provider in 30 states, and has done so for the past 14 years (formerly as One Call
25 Communications).

26 21. The Company uses three operator call centers, two in the Dominican Republic
27 (approximately 200 total employees) and one in Indiana (approximately 30 to 35 total employees)
28 (Tr. 13). Mr. Hill described the processing of zero-minus calls by OCMC operators as follows:

1 [U]pon dialing zero, a caller reaches the OCMC automated operator. The
2 automated operator gives instructions to the caller to dial zero for operator
3 assistance. At that point, the call will roll over to a live operator. Upon
4 hearing that the caller has an emergency, the operator will immediately
5 instruct the caller to hang up and dial 911. If the caller indicates that 911
6 was not available or dialing 911 did not work for any reason, the operator
7 will listen to the caller's request, and will connect the caller to the
8 emergency agency requested. Operators are trained not to question the
sincerity of an emergency and to connect the caller immediately to the
appropriate emergency agency. The operator remains on the line until the
call is completed, making sure that he or she is available for any other
questions with regard to the caller's origination or the caller's address or
phone number. (Ex. A-1, at 4)

9 22. According to Mr. Hill, OCMC does not track separately zero-minus "emergency" and
10 "regular" or "zero-plus" calls (*i.e.*, for collect, third party, calling cards, or travel cards). With respect
11 to the difference between the processing times reported by Qwest and OCMC for zero-minus calls,
12 Mr. Hill stated that he conducted more than 30 test calls to Qwest operators in September 2004 and
13 found that the Qwest calls regularly exceeded its reported 7.9 to 9.6 seconds for being connected to a
14 live operator because zero-minus calls to Qwest require callers to negotiate several initial automated
15 prompts. Mr. Hill claims that, in comparison, OCMC's automated operator script instructs the caller
16 to dial zero within seconds of starting and "given that OCMC uses state-of-the-art systems, OCMC
17 compares favorably to Qwest for this segment of the call" (*Id.* at 7).

18 23. For the next segment of the call (*i.e.*, after being connected with the live operator the
19 average/typical time reported for the caller to be connected with an emergency service provider), the
20 data reported by Staff indicates that Qwest's average is 25 seconds and OCMC's average is 44.6
21 seconds. Mr. Hill contends that the difference in reported times is due to OCMC's inclusion of zero-
22 plus calls. He stated that, based on its experience in the industry for over 10 years, OCMC processes
23 zero-minus emergency calls in a manner that is "as quick as is prudent to maintain accuracy for those
24 calls" (*Id.* at 8). Mr. Hill believes therefore that a permanent waiver of A.A.C. R14-2-1006 is
25 appropriate under the facts presented (Ex. A-2, at 3).

26 24. Through its June 17, 2005 Memorandum, and the testimony presented by Staff witness
27 Del Smith, Staff recommends granting the requested permanent waiver. According to Staff, the
28

1 Commission was aware of the difference between OCMC and Qwest in reported call processing
2 times at the November 23, 2004 Open Meeting, but nevertheless granted a six-month waiver of the
3 zero-minus rule contingent on Staff's tracking of customer complaints during that period. Staff stated
4 that there were no formal or informal complaints received by the Commission regarding OCMC's
5 processing of zero-minus calls during the six-month temporary waiver period. Therefore Staff
6 recommended that an indefinite waiver should be granted, subject to the requirement that OCMC file
7 reports every January and July, beginning in January 2006, attesting that its processing times for the
8 prior six months adhere to the current reported call processing times discussed above. If OCMC fails
9 to maintain that standard for any given six-month period, Staff recommends that the Company be
10 required to file an application within 45 days thereof requesting continuation of the waiver. Staff
11 further recommends that OCMC be permitted to discontinue the semi-annual reports after July 2009
12 if it has continually maintained the processing times discussed above (Ex. S-2).

13 25. Staff witness Del Smith testified that OCMC and Qwest employ comparable facilities
14 and procedures for processing zero-minus calls and, based on its analysis, Staff believes OCMC has
15 the capability to process such calls with an equal level of accuracy and reliability to that provided by
16 Qwest. Mr. Smith stated that Staff believes the difference in the reported call times is due primarily
17 to the fact that OCMC operators remain connected for the duration of such calls instead of dropping
18 off the call after connection to an emergency service provider, and due to differences in how Qwest
19 and OCMC time zero-minus calls (Ex. S-3, at 4).

20 26. On cross-examination, Mr. Smith conceded that the processing times reported by
21 OCMC and Qwest were not "equal" in a strict interpretation sense. However, he indicated that the
22 waiver is justified in this case due to the apparent differences in how the calls are measured (Tr. 38).
23 Mr. Smith also pointed out that when the AOS rules were originally established the AOS industry
24 was fraught with numerous complaints, especially regarding billing issues. He testified that, in recent
25 years, the number of AOS assisted calls has declined significantly due to widespread availability of
26 911 service and other technologies (Tr. 42, 48). Staff does not believe that the public safety would be
27 jeopardized by granting the requested waiver and therefore it recommends approval of the request
28 subject to compliance with the reporting requirements discussed above.

27. We agree with Staff that it is reasonable to grant the requested permanent waiver of the zero-minus rules under the specific facts and circumstances presented in this proceeding. As the evidence presented at hearing shows, no formal or informal complaints were received by the Commission regarding OCMC's processing of zero-minus calls during the six-month temporary waiver period previously granted. In addition, the record shows that OCMC and Qwest employ comparable facilities and procedures for processing zero-minus calls and, based on its analysis, Staff believes OCMC has the capability to process such calls with an equal level of accuracy and reliability to that provided by Qwest. Further, it appears that the discrepancy in reported processing times is due to differences in how the calls are measured, as opposed to a deficiency in OCMC's handling of such calls. Based on these facts, we do not believe that the public safety would be jeopardized by granting the requested waiver. Accordingly, granting the requested waiver is consistent with the public interest, contingent upon the Company's compliance with the conditions recommended by Staff as discussed above. However, our grant of the waiver herein should not be interpreted as an indication of what action may be taken in a future case under different facts.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281, 40-282 and § 40-285.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Staff's recommendations, set forth above, should be adopted.

4. OCMC should be granted a permanent waiver of the zero-minus rules, as set forth in A.A.C. R14-2-1006.A, subject to compliance with Staff's recommendations as set forth herein.

ORDER

IT IS THEREFORE ORDERED that OCMC, Inc. shall be granted a permanent waiver of the zero-minus rules as set forth in A.A.C. R14-2-1006.A, conditioned upon its compliance with the conditions recommended by Staff as set forth herein.

IT IS FURTHER ORDERED that OCMC, Inc. shall file reports every January and July, beginning in January 2006, attesting that its processing times for the prior six months adhere to its

1 current reported call processing times, as described above.

2 IT IS FURTHER ORDERED that if OCMC, Inc. fails to maintain its current call processing
3 standards for any of the six-month reporting periods, in accordance with Staff's recommendations
4 OCMC shall have forty-five (45) days to file an application with the Commission to extend the
5 waiver of A.A.C. R14-2-1006.A conditionally granted herein.

6 IT IS FURTHER ORDERED that OCMC, Inc. may seek discontinuance of the reporting
7 requirements recommended by Staff after July 2009 if it has continually maintained its current call
8 processing standards during the entirety of the reporting period required herein.

9 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

10 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

11
12 
13 CHAIRMAN

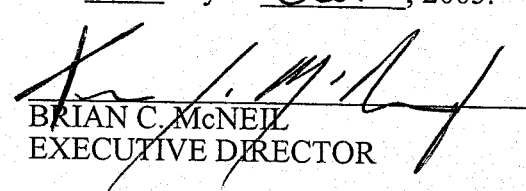

COMMISSIONER

14 
15 COMMISSIONER


COMMISSIONER


COMMISSIONER

16
17 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
18 Director of the Arizona Corporation Commission, have
19 hereunto set my hand and caused the official seal of the
20 Commission to be affixed at the Capitol, in the City of Phoenix,
21 this 25th day of Oct., 2005.

22 
BRIAN C. McNEIL
EXECUTIVE DIRECTOR

23 DISSENT _____

24
25 DISSENT _____

1 SERVICE LIST FOR:

OCMC, INC.

2 DOCKET NO.:

T-04103A-02-0274 and T-02565A-02-0274

3 Michael Hallam
4 Thomas Campbell
5 LEWIS AND ROCA
6 40 North Central Ave.
7 Phoenix, Arizona 85004

8 Anne C. Bernard
9 General Counsel
10 One Call Communications, Inc. dba Opticom
11 801 Congressional Blvd.
12 Carmel, IN 46302

13 Laura Clore
14 Regulatory Manager
15 One Call Communications, Inc. dba Opticom
16 801 Congressional Blvd.
17 Carmel, IN 46032

18 Norman G. Curtright
19 Qwest Corporation
20 4041 N. Central Ave., Suite 1100
21 Phoenix, AZ 85012

22 Christopher Kempley, Chief Counsel
23 Legal Division
24 ARIZONA CORPORATION COMMISSION
25 1200 W. Washington Street
26 Phoenix, Arizona 85007

27 Ernest Johnson, Director
28 Utilities Division
ARIZONA CORPORATION COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007